

**Remarks**

The Examiner rejected claims 1, 2, 6-8, and 13 under 35 USC §102 as being anticipated by U.S. Patent No. 4,063,371 to Batra ("Batra"). Based on the forgoing amendments and following remarks, Applicant respectfully submits all claimed limitations are not disclosed in Batra and, therefore, these claims are in condition for allowance.

All claims relate to an outsole having a plurality of notches extend across a top surface of the outsole and a plurality of channels extend across a bottom surface of a footbed, where the plurality of channels and plurality of notches have similar orientations at least in part so that the plurality of notches and plurality of channels mate together to define a plurality of passages.

As supported by paragraphs 35-36 of the specification, the notches and channels mate together so that the resulting passages provide enhanced ventilation due to the combined size of the notches and channels. Such enhancement also does not require a thicker outsole or thicker footbed as each need not accommodate the entire passage but only a portion of the passage.

Batra does not disclose a plurality of channels in the footbed that extend across the bottom surface. As shown in Batra, the holes are perpendicular to the footbed's surface and, therefore, teach a different structure than Applicant's claimed plurality of channels that extend across the bottom surface. Batra also does not disclose a plurality of notches in the outsole that extend across the top surface. As shown in Batra, the holes in the outsole are perpendicular to the outsole's surface and, therefore, teach a different structure than Applicant's claimed plurality of notches that extend across the top surface.

In addition to the above, Batra further fails to disclose that the plurality of channels and plurality of notches, each extending across respective surfaces, have similar orientations at least in part so that the plurality of notches and plurality of channels mate together to define a plurality of passages. Since Batra does not have holes that extend across the surfaces of the outsole or footbed, the holes cannot mate together to define a passage.

Because Gustaveson does not anticipate two of the claimed elements of Applicant's claims, Gustaveson cannot anticipate all of the claimed limitations of Applicant's invention, the rejections with respect to Batra under 35 USC §102 should be withdrawn.

The Examiner rejected claims 3-5, 9, 16, and 18-19 under 35 USC §103 as being unpatentable over Batra in view of U.S. Patent No. 4,888,887 to Solow ("Solow"). Similar to Batra, Solow does not teach or suggest an outsole with a plurality of notches extending across a top surface of an outsole or a footbed with a plurality of channels extending across a bottom surface of the footbed, where the plurality of channels and plurality of notches have similar orientations at least in part so that the plurality of notches and plurality of channels mate together to define a plurality of passages.

A prima facie case of obviousness requires that the Examiner show that the proposed combination teaches all of the claimed elements, that there is motivation for the combination, and that there is a reasonable expectation of success for the combination. Because no reference alone or in any combination with one another relates an outsole with a plurality of notches extending across a top surface of an outsole or a footbed with a plurality of channels extending across a bottom surface of the footbed, where the plurality of channels and plurality of notches have similar orientations at least in part so that the plurality of notches and plurality of channels mate together to define a plurality of passages, the proposed combination cannot include the claimed notches and channels. When no reference refers to such claimed features, the motivation to

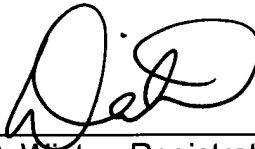
combine the stated references in a manner to include Applicant's claimed feature is also absent. The reasonable expectation of success prong is moot.

Moreover, both references teach a different structure of notches and channels by disclosing them to be perpendicular to the respective surfaces. Given the different teachings and lack of any disclosure to the contrary, the combination of the references do not arrive at Applicant's claimed invention without some modification to the combination and, as described above, the motivation for any such modification is absent.

Based on the foregoing, Applicants' submit that all claims are allowable and that all rejections be withdrawn.

Respectfully submitted,

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